

STATE OF MICHIGAN  
COURT OF APPEALS

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COMERICA BANK,

Plaintiff-Appellee,

v

IOANNIS KOROGIANNIS,

Defendant-Appellant.

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UNPUBLISHED

August 30, 2005

No. 252422

Wayne Circuit Court

LC No. 03-305375-CZ

Before: Gage, P.J., and Whitbeck, C.J., and Saad, J.

PER CURIAM.

Defendant Ioannis Korogiannis appeals as of right from the trial court's order granting summary disposition to plaintiff, Comerica Bank, under MCR 2.116(C)(10) on its claim against Korogiannis as the guarantor of a promissory note. We affirm.

I. Basic Facts And Procedural History

Korogiannis and two of his cousins started a restaurant called the Parthenon Express, LLC. Korogiannis signed a Variable-Rate Demand Note for \$90,000 as the managing member of obligor Parthenon Express. Comerica Bank claims that Korogiannis also signed a Guaranty on February 22, 1999, for "all existing and future indebtedness" of Parthenon Express to Comerica. Parthenon Express defaulted on the loan by failing to make timely payments and failing to provide required financial information. Comerica sued Korogiannis, as guarantor of the loan, to collect \$56,392.50 plus interest and late charges for a total of \$58,600.93. Korogiannis filed an answer denying the allegations. However, Korogiannis did not attach an affidavit to the answer denying that he signed the Guaranty.

Comerica moved for summary disposition under MCR 2.116(C)(9) and (10), claiming that there was no genuine issue of material fact as to whether Korogiannis signed the guaranty, that Comerica was entitled to judgment as a matter of law, and that Korogiannis did not raise a valid defense. Korogiannis responded and submitted an affidavit denying that he signed the Guaranty. In his brief opposing the summary disposition motion, he requested that the trial court extend the time for filing this affidavit, although he did not file a separate motion to this effect. He did, however, move to amend his answer to include the affidavit. At the motion hearing, Korogiannis' counsel admitted that Korogiannis owned one-third of Parthenon Express and that Korogiannis signed the Variable-Rate Demand Note on behalf of Parthenon Express as a managing member. However, Korogiannis' counsel denied that Korogiannis signed the Guaranty and asserted that Parthenon Express bought Korogiannis' interest shortly after it began business.

The trial judge found that Korogiannis was an owner of Parthenon Express when the Variable-Rate Demand Note was executed. The trial court also found that Korogiannis signed the Guaranty based on MCR 2.112(E)(1), which deems a signature admitted if the party did not file an affidavit with the answer denying the signature's validity. The trial court granted plaintiff's motion under MCR 2.116(C)(10) and entered judgment for Comerica. Defense counsel objected because he had filed a motion to amend the answer; however, the trial court dismissed Korogiannis' motion to amend his answer as moot because it had just closed the case.

## II. Summary Disposition

### A. Standards Of Review

Korogiannis argues that the court erroneously found that he signed the Guaranty, erroneously granted summary disposition given that Korogiannis created a factual issue by submitting an affidavit denying that he signed the Guaranty, and erroneously dismissed his motion to amend his answer to include the affidavit.<sup>1</sup> We review de novo the trial court's ruling on a motion for summary disposition.<sup>2</sup> We review the trial court's decision respecting whether good cause existed to extend the time for filing the affidavit for an abuse of discretion.<sup>3</sup> We review the trial court's decision on a motion to amend for an abuse of discretion.<sup>4</sup>

### B. "Good Cause" Under MCR 2.112(E)(1)

The rule of pleading that governs actions on written instruments is MCR 2.112(E)(1). It provides:

In an action on a written instrument, the execution of the instrument and the handwriting of the defendant are admitted unless the defendant specifically denies the execution or the handwriting and supports the denial with an affidavit filed with the answer. The court may, for good cause, extend the time for filing the affidavits.

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<sup>1</sup> Korogiannis points out that Comerica never cited any authority for the proposition that the Guaranty was a written instrument to which MCR 2.112(E)(1) applies. It is unclear why Korogiannis assumes such authority would be necessary, in view of the fact that the phrase "written instrument" is quite broad, and has generally been understood to apply to any written contract. See *Yaldo v North Pointe Ins Co*, 457 Mich 341, 346; 578 NW2d 274 (1998). In any event, because it is Korogiannis who seeks appellate relief on this ground, the burden is not on Comerica to provide authority for the proposition that MCR 2.112(E)(1) applies to the Guaranty; rather, the burden is on Korogiannis to provide authority for the proposition that it does not. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Because he has not done so, we will not address this issue further. See *id.*

<sup>2</sup> *Barnell v Taubman Co, Inc*, 203 Mich App 110; 512 NW2d 12 (1993).

<sup>3</sup> See *Bush v Beemer*, 224 Mich App 457, 464-465, 466; 569 NW2d 636 (1997).

<sup>4</sup> *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997).

Apparently, Korogiannis never filed a motion to extend the filing time under this rule; rather, he included a request for an extension in his brief opposing the summary disposition motion. Even assuming this method of requesting an extension was valid, Korogiannis does not explain why he did not file an affidavit denying the signature was his with the answer, apart from stating that he told counsel for Comerica that the signature was not his and he was waiting for Comerica to verify that fact. However, Korogiannis offers no authority for the proposition that putting the other party on notice is an acceptable substitute for filing an affidavit with the answer, or that it constitutes good cause for an extension. We conclude that the trial court did not abuse its discretion in refusing to extend the time for filing the affidavit.

### C. Motion To Amend The Answer Under MCR 2.116(I)(5)

Korogiannis argues that, under MCR 2.116(I)(5), the trial court was obligated to allow him to amend his answer to include the affidavit denying that he signed the Guaranty. MCR 2.116(I)(5) provides that where, as here, a motion for summary disposition is based on MCR 2.116(C)(10), the trial court “shall” give the parties an opportunity to amend their pleading “unless the evidence then before the court shows that amendment would not be justified.”<sup>5</sup> Korogiannis’ argument is predicated on the assumption that, if the trial court had granted his motion to amend the answer, the submission of the accompanying affidavit would have conformed to the requirements of MCR 2.112(E)(1). However, the Michigan Supreme Court has held that where a court rule or statute requires the filing of an affidavit with a specific pleading, a party may not obviate this requirement by filing the affidavit with an amended pleading.<sup>6</sup> Because allowing Korogiannis to amend the answer would not have allowed him to submit the affidavit in accordance with the requirements of MCR 2.112(E)(1), the amendment would not have been justified, and the trial court did not err in denying Korogiannis’ motion.

In the absence of a properly submitted affidavit denying the validity of Korogiannis’ signature, there was no factual question remaining, and the trial court properly granted summary disposition.

Affirmed.

/s/ Hilda R. Gage  
/s/ William C. Whitbeck  
/s/ Henry William Saad

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<sup>5</sup> MCR 2.116(I)(5) provides in full:

If the grounds asserted are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified.

<sup>6</sup> See *Scarsella v Pollak*, 461 Mich 547, 550; 607 NW2d 711 (2000) (a plaintiff claiming medical malpractice must file an affidavit of merit with the original complaint, not an amended complaint, to comply with MCL 600.2912d(1) and MCR 2.112(L)).